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7 Attorneys for Defendants COUNTY OF MONTEREY and
8 MICHAEL KANALAKIS

9 **IN THE UNITED STATES DISTRICT COURT**

10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 JIMMY D. HAWS, SETH DANIEL HAWS,
12 and MIA SKYE HAWS, minors, by and
through their guardian ad litem, CARRIE A.
13 HAWS, and CARRIE A. HAWS,
individually,

14 Plaintiffs,

15 v.

16 COUNTY OF MONTEREY, MICHAEL
17 KANALAKIS, NATIVIDAD MEDICAL
CENTER and DOES 1-300, inclusive,

18 Defendants.
19 _____/

Case No. C 07-02599 JF

DEFENDANTS COUNTY OF MONTEREY
AND MICHAEL KANALAKIS'
SUPPLEMENTAL BRIEF RE:
PLAINTIFFS' MOTION TO COMPEL

21 **PURSUANT TO THE COURT'S ORDER OF MARCH 26, 2008, DEFENDANTS**
22 **COUNTY OF MONTEREY AND MICHAEL KANALAKIS (HEREINAFTER DEFENDANTS")**
23 **HEREBY SUBMIT THEIR SUPPLEMENTAL BRIEF REGARDING PLAINTIFFS' MOTION**
24 **TO COMPEL:**

25 **Counsels' Meet and Confer:**

26 As the court ordered on March 26, 2008, the attorneys conducted a meet and confer in this matter
27 on April 2, 2006, at Mr. Boroff's office in Santa Cruz. Co-counsel for Plaintiffs, Mr. Michael Moore,
28 also participated in the meet and confer via speaker phone.

1 Counsel for Defendants believes that the meet and confer was very productive and that the
2 attorneys were able to resolve and come to an agreement regarding many of the issues raised in
3 Plaintiffs' Motion to Compel, with only two issues yet to be resolved, as will be discussed below.
4 Defense counsel agreed to provide certain requested documentation to Plaintiffs' counsel if, in fact, it
5 exists, and also to provide certain requested information to counsel for Plaintiffs subject to a Protective
6 Order agreed to by the parties, if necessary. Defense counsel is now confident that the parties can
7 resolve the discovery issues between themselves without the necessity of future court intervention.
8 Defense counsel is hereby withdrawing her request for sanctions contained within Defendants'
9 Opposition to the Motion to Compel.

10 **Remaining Issues:**

11 **The Personnel Files of the Sheriff's Deputies**

12 At the meet and confer on April 2nd, Defense counsel put forth her position regarding the
13 disclosure of the deputies' personnel files and records. Defense counsel believes she is obligated to
14 assert the privilege against disclosure of these records as set forth in California Penal Code §§ 832.7 and
15 832.8 regarding the confidentiality of these records and the exclusive stated methods for obtaining these
16 records as set forth in California Evidence Code §§ 1043, et seq. These assertions are believed by
17 counsel to be necessary in order to avoid violating the deputies' (who are peace officers certified by the
18 State of California) rights as set forth in the Public Safety Officers Procedural Bill of Rights Act
19 (California Government Code §§ 3300-3313). Defense counsel is in the process of preparing a privilege
20 log indicating which deputies' records/files she is withholding. This privilege log will be forwarded to
21 plaintiffs' counsel at the same time counsel serves a copy of this supplemental brief.

22 While recognizing that the Federal court is not obligated to even consider a state privilege, and in
23 anticipation of the court ordering the production of the requested information pursuant to a protective
24 order, the attorneys discussed the production of the records. Plaintiffs' counsel narrowed his request as
25 to what categories of information he specifically is looking for regarding the deputies' records. Defense
26 counsel will, of course, comply with the order of the court regarding these records and if so ordered, will
27 instruct the custodian of records for the Monterey County Sheriff's Office to review the records of the
28 deputies and produce any documents responsive to plaintiffs' counsel's request.

Medical Records of Jimmy Haws and Roger Spencer:

Counsel discussed the issue of the medical records of both Jimmy Haws and Roger Spencer along with the issue of the records being maintained and in the possession of California Forensic Medical Group (CFMG). Mr. Boroff stated that he would redo his subpoena to CFMG as to his request for medical records of Jimmy Haws. Ms. Kirkbride agreed to contact CFMG and/or CFMG's attorney and request that CFMG produce the medical records of both Jimmy Haws and Roger Spencer. Ms. Kirkbride will promptly notify plaintiffs' counsel regarding CFMG's response to her request.


CONCLUSION

As stated previously, defense counsel is now confident that any discovery disputes between the parties can be resolved through discussion between counsel and that this will avoid the necessity of future court intervention in any discovery disputes. Defense counsel is looking forward to a more productive and congenial spirit of cooperation with plaintiffs' counsel and will strive to her utmost to keep it that way.

DATED: April 4, 2008.

Respectfully submitted,

CHARLES J. McKEE, County Counsel

By 

TRACI A. KIRKBRIDE
Deputy County Counsel

Attorneys for Defendants COUNTY OF MONTEREY
and MICHAEL KANALAKIS